

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

BRENDA E. MCCARTHY a/k/a)
BRENDA MCCARTHY-TRAYAH,)
Plaintiff,)
)
v.)
) Civ. Action. No
)
GREEN TREE SERVICING, LLC,)
AND GMAC MORTGAGE,)
Third Party Defendants.)
)

NOTICE OF REMOVAL

TO: The Honorable Judges of the United States District Court for the District of Massachusetts

Pursuant to 28 U.S.C. §§ 1441 *et seq.*, Defendant Green Tree Servicing, LLC (“Green Tree”) hereby removes the action captioned Trustees of the Stonegate Condominium Trust v. Brenda E. McCarthy a/k/a Brenda McCarthy-Trayah, C.A. 13-1780C, now pending in the Massachusetts Superior Court, Worcester County, to the United States District Court for the District of Massachusetts.¹ In so doing, Green Tree states the following:

1. The original plaintiff, Trustees of the Stonegate Condominium Trust (“Stonegate”), filed an action in Massachusetts Superior Court on or about October 2, 2013, in which Green Tree was listed as a “Defendant/Party-in-Interest.” A true and correct copy of Stonegate’s complaint is attached hereto as Exhibit B. In its complaint, Stonegate sought to

¹ Defendant GMAC Mortgage is currently in bankruptcy proceedings and, as a result, all litigation against it has been stayed. See Notice of Bankruptcy and Supplemental Servicing Order filed in state court, attached hereto as Exhibit A.

enforce a lien it allegedly held on property owned by Defendant Brenda E. McCarthy (“McCarthy”).

2. On or about October 16, 2013, McCarthy filed a cross-claim against Green Tree and a third-party complaint against defendants GMAC Mortgage (“GMAC”) and Marcus, Errico, Emmer & Brooks, P.C. (“Marcus”), in which she alleged that Green Tree and Marcus violated the Fair Debt Collection Practices Act (the “FDCPA Claim”) and that Green Tree, Marcus and GMAC violated M.G.L. 93A(2) (the “93A Claim”). On October 21, 2013, McCarthy voluntarily dismissed all claims against Marcus.

3. On December 19, 2013, Stonegate dismissed its claims against McCarthy and Green Tree. A true and correct copy of the stipulation Stonegate filed with the state court is attached as Exhibit C. As a result, McCarthy’s cross-claim/third-party complaint is now the sole complaint in the state court action.

4. McCarthy’s FDCPA Claim expressly relies upon a federal statute. Therefore, McCarthy’s FDCPA claim arises under federal law and this court has jurisdiction over it pursuant to 28 U.S.C. § 1331. Furthermore, McCarthy’s 93A Claim is premised upon exactly the same facts as the FDCPA claim. Therefore, this Court has jurisdiction over the 93A Claim pursuant to 28 USC § 1367.

5. Prior to Stonegate’s dismissal of the underlying complaint on December 19, 2013, Defendant Green Tree was merely a defendant-in-cross-claim, and therefore was unable to remove this action. See, e.g., First Nat’l Bank of Pulaski v. Curry, 301 F.3d 456, 462 (6th Cir. 2002) (“Counterclaims, cross-claims, and third-party claims cannot be the basis for removal” (internal quotation marks omitted)); Chase Bank, N.A. v. Berg, No. 08-10286-LTS, 2008 WL 1925002, at * 1 (D. Mass. April 29, 2008) (adopting reasoning in First Nat’l Bank). Therefore,

Green Tree's notice of removal is timely as it is filed within thirty (30) days of receipt of the pleading "from which it may first be ascertained that the case is one which is or has become removable." 28 U.S.C. § 1446(c).

6. Pursuant to 28 U.S.C. § 1446, a copy of this Notice of Removal is being filed with the Massachusetts Superior Court.

7. Pursuant to Local Rule 81, Green Tree will file certified or attested copies of the docket sheets and all documents that have been filed in the Superior Court.

WHEREFORE, Green Tree respectfully requests that the above action now pending against it in the Massachusetts Superior Court be removed therefrom to this Court.

GREEN TREE SERVICING, LLC,

By its attorneys,

/s/ Thomas R. Sutcliffe

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Dated: January 14, 2014

CERTIFICATE OF SERVICE

I, Thomas R. Sutcliffe, certify that on January 14, 2014, I served a copy of the foregoing document on counsel for all parties by delivering a copy of the same by first class mail.

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//s// Thomas R. Sutcliffe
Thomas R. Sutcliffe